

C# 07613

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration between the UNITED STATES POSTAL SERVICE and NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	( ) ( ) ) ( ) ( ) (	Grievant: Class Action Post Office: Agawam, MA Case No: N4N-1G-C-35824
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BEFORE                    Rodney E. Dennis,                    Arbitrator

Appearances:

For US Postal Service:

Frederick Nesman                    -                    Management Advocate

For the Union:

John Pimentel, Jr.                    -                    President, Branch 57, NALC

Date of Hearing:    October 21, 1987

Place of Hearing:    Springfield, Massachusetts

Award:    Each Grievant to be paid \$500.

Date of Award:    November 14, 1987

BACKGROUND OF THE CASE

On February 19, 1987, requests for Special Inspections, in accordance with Section 270 of the M-39 Manual, were made by Carriers at the Agawam, Massachusetts, Post Office. These requests were for Routes 5, 6 and 8. On March 17, 1987, an additional request was submitted for Route 9. The Special Route Inspections were never granted. The Union considered the Postal Service's failure to do the Special Route Inspections within 30 days of the date requested to be a violation of Article 19 of the National Agreement (failure to comply with Section 271.g of the M-39 Handbook). It consequently filed a grievance. The grievance was denied at each step of the procedure and was placed before the Arbitrator for final resolution.

THE ISSUE

Did the Postal Service violate the National Agreement by refusing to conduct and implement timely Special Route Inspections on the routes of the Grievants? And, if yes, what is the appropriate remedy?

LANGUAGE FROM THE M-39 MANUAL PERTINENT TO THE CASE

271(g). If over any 6 consecutive week period (when work performance is otherwise satisfactory) a route shows over 30 minutes of overtime or auxiliary assistance on each of 3 days or more in each week during this period, the regular carrier assigned to such route shall, upon request, receive a special mail count and inspection to be completed within 4 weeks of the request.

STIPULATION

The parties agreed that Special Inspections were requested on February 19, 1987 and March 17, 1987. They also agreed that the results of this arbitration would apply to four Grievants.

<u>Carrier</u>	<u>Route</u>
Edward Landry	(09)
Louis Vernoesi	(06)
Wallace Cowles	(05)
Maureen Price	(08)

POSITIONS OF THE PARTIES

The Union

The Union contends that the Postal Service was in violation of Article 19 of the National Agreement (Section 271(g) of the M-39 Handbook) when it failed to honor the requests made by the Grievants in this case for Special Route Inspections. It further argues that the appropriate penalty in such a case is to direct the Post Office to perform the Special Route Inspections and grant to each affected Carrier a monetary award. In support of its position, the Union presented a number of arguments:

(1) The Postal Authorities at Agawam were fully aware that the four routes in question met the conditions precedent outlined in Section 271(g) and that Route Inspections should have been performed. The Officer in charge at Agawam agreed to this condition when, on July 10, 1987, he signed a memo to John Marco, a National Business Agent of the Letter Carriers, so stating. The memo reads as follows:

Whether or not the carriers met the qualifications as noted in the M-39 paragraph 271g, is not the issue of disagreement in this grievance.

(2) The Language of 271(g) is clear. It states that if a route qualifies for a Special Inspection (and all routes in question do), the Inspection must be completed within four weeks of the request. No Inspections have ever been performed on the routes in question.

(3) Monetary awards for the failure of the Postal Service to inspect and adjust routes have been made by Arbitrators, as well as by Postal Labor Relations people at the third step of the grievance procedure.

To deny a monetary award in this instance would be to support Management's blatant disregard of Carrier's rights and to undermine the grievance procedure.

(4) The Postal Service has advanced numerous new arguments at arbitration that were not mentioned in the grievance procedures. Those arguments should be ignored by the Arbitrator. The Contract requires

that a complete statement of the facts and position be made by both parties during the earlier steps of the grievance procedure and not saved for arbitration.

(5) Based on the total record of the case, the grievance should be upheld as requested.

#### The Postal Service

The Postal Service contends that Section 271(g) of the M-39 Handbook and Article 19 of the National Agreement were not violated when Management at Agawam failed to perform Special Route Inspections on Routes 5, 6, 8, and 9. In support of its position, the Postal Service presented a number of arguments, chief among them are the following:

(1) Conditions at Agawam Post Office in the Winter and Spring of 1987 was very bad. There was a considerable amount of mail backed up. The facilities were overtaxed and available manpower was inadequate to perform properly the mission of the Post Office. Because of these adverse conditions, the routes in question could not be properly evaluated and Special Inspections were not appropriate at this time.

(2) The Officer in charge did not agree that the routes in question met the requirements outlined in Section 271(g) of the M-39 Manual.

(3) The Union has never really wanted the routes in question to be evaluated; it only filed the grievance seeking money, not seeking route adjustments.

(4) All of the Carriers involved were on the overtime desired list during the period in question. If their routes were overburdened, they received overtime pay for the extra work. What they seek in this arbitration is punitive damages, pay over and above what was properly paid to them for hours worked. That is inappropriate and the Arbitrator should deny the grievance.

#### FINDINGS

The record of this case clearly reveals that the Carriers listed in this grievance had a legitimate basis on which to request a Special Route Inspection. It is also clear that the Postal Service did not perform the Inspections. Instead, it attempted to solve some of the problems that caused the Carriers to be overburdened by implementing changes in procedures for handling the mail and by hiring new people to help in the delivery of the mail. Management at Agawam considered these efforts sufficient to justify not performing the Special Route Inspections that were requested. In spite of Management's efforts to solve the problem, it is clear from the record that Special Route Inspections should have been performed and adjustments made in the routes if the results of the Inspections warranted it. This was not done and the Service's inaction constitutes a Contract violation. Section 271(g) requires that if conditions warrant a Special Route

Inspection (Management agreed that the routes in question met the requirements for inspection), it must be done. There is no exceptions to this requirement.

It also appears from this record that the parties at various locations in the country have been confronted with the same or similar situations. In many of those cases, the parties have agreed that when Special Route Inspections are improperly denied or delayed, the affected Letter Carrier is frequently granted a monetary award for the delay. These Awards have been over and above the pay received by the Letter Carrier. They are pure and simply punitive or penalty Awards. Arbitrators have granted such Awards and the Postal Service and the Letter Carriers have settled on such a basis at Step 3 and in consent arbitration awards in which the parties have specified that the Inspections will be completed and a dollar amount will be paid to each Grievant as compensation for the delay.

While Arbitrators are not rigidly bound by precedent or what has gone before them, it serves no purpose in this instance not to follow what appears to be an agreed-upon concept between labor relations people in the Postal Service and the Letter Carrier's Union. With that in mind, I shall award to each Grievant listed on all routes at issue in this arbitration \$500 as a monetary payment for the Postal Service's failure to perform the Special Route Inspections in a timely manner. I will not, however, direct that the Inspections take place

at this time. Since this grievance was filed, numerous changes may have been made that would make any or all of the routes involved in this grievance ineligible for Special Inspections and change. I therefore shall direct that Management at Agawam and the local Union people meet to discuss the continued need, if any, for Special Route Inspections. If, based on the requirements of Section 271(g) of the M-39 Handbook, they conclude that a need still exists, then the Postal Service shall, in accordance with those requirements, perform the Special Route Inspections.

AWARD

Each Grievant shall be paid \$500. Parties to meet and discuss current needs, if any, for Special Route Inspections on Routes 5, 6, 8, and 9.

  
Rodney E. Dennis  
Arbitrator

New York, New York  
November 14, 1987